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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

NO. 425

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

HIGHLAND PARK MANUFACTURING COMPANY
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MEMORANDUM FOR THE RESPONDENT IN ANSWER TO REPLY BRIEF FILED BY THE NATIONAL LABOR RELATIONS BOARD

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Upon the argument of this case, it is the Respondent's understanding that the Court expressed interest and surprise that the Board should be admitting that the words "labor organization, national or international in scope," appearing in Section 10 (c) of the Act, include and refer to the CIO and AFL and that the Board should be at the same time contending that the words "national or inter-

national labor organization," appearing in Section 9 (h) of the Act, do not include or refer to the CIO and AFL.

It is the Respondent's further understanding that the Court invited the Board to make clear whether it does stand both upon the former admission and the latter contention. The Board has now filed with the Court a short "Reply Brief" in which it does make clear that such is exactly its position. The Board says (Bd. Reply Br., p. 5) that:

> "It appears that by the words 'affiliated with a labor organization, national or international in scope' Congress intended to refer to the AFL or CIO . . ."

Indeed the Board could hardly deny that it has heretofore clearly conceded that the phrase "labor organization, national or international in scope" as used in the Statute does include the CIO and AFL. In the Brief which it filed in the Court below the Board said (p. 40):

> "It is clear once again that when Congress intended to refer specifically to the AFL or CIO, it described them . . . as labor organizations 'national or international in scope' . . ."

Likewise in its own decision in *Carpenter Steel Company*, 76 NLRB 670, the Board definitely accepted this phrase as encompassing and applying to "a national federation," which it now says the CIO is. And in its main Brief in this Court the Board also conceded (p. 113) that "when Congress desired in the Statute to refer to the AFL or the CIO . . . it used such words as . . . 'labor organization, national or international in scope' . . ."[1] Now once again

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[1] This phrase appears only once in the Statute, viz., in Section 10 (c).

in its Reply Brief the Board, as pointed out above, reiterates this admission.

What the Board largely devotes its Reply Brief to, however, is the reargument of its contention that whereas Congress intended to include the CIO when it used the words "labor organization national in scope," it did not intend to include the CIO when it used the words "national labor organization." The Board still presents no authority and no new reasoning to support this strained proposition. And there seems to be no occasion for the Respondent now to burden the Court with a review of the reasoning and authority which refute the Board's contention. The Respondent's argument bearing upon this is developed in Respondent's main Brief (p. 4-39) and demonstrates that in relation to the admitted purpose of Section 9 (h), the scope and functions of the CIO, the language and definitions of the Act, and the holdings of this and other courts, the contention of the Board is tortuous and untenable.

In the thought that it may be of further interest, however, the Respondent, with the Court's permission will call attention to a statute, not heretofore cited, in which Congress has undeniably used the words "labor organization national in scope" as interchangeable with the words "national labor organization." Section 3 of the Railway Labor Act (45 U.S.C.A. 153) provides in part:

> "(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such *labor organizations* of the employees, *national in scope* . . .
>
> "(c) The *national labor organizations*, as defined in paragraph (a) of this section, acting each through

> the the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected . . ." (emphasis supplied)

Thus it is further demonstrated that since "labor organization national in scope" and "national labor organization" mean the same thing and the Board admits that the former includes the CIO, then so does the latter.

In concluding its Reply Brief the Board takes occasion to touch again on the subject of the union's "disability" in this case having been "cured" and makes now an additional assertion to the Court that the CIO not only complied with Section 9 (h) on a date in the past but is now in compliance.

As to this, the Respondent again believes it not appropriate to attempt to reargue what is set forth in its main Brief on this subject (pp. 55-60). Upon the reasoning and authority there developed it is clear that the Board cannot now raise the contention which it seeks to make on this point, and that in any event the "curing" of the union's "disability" is altogether irrelevant and of no effect in a case which proceeded completely through the Board in contravention of the Statute.

The fundamental point on this is that even if the Respondent violated the Act, which is earnestly denied,[2] just

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[2] The Respondent's position upon the ultimate merits of the case is set forth in the Brief which Respondent filed in opposition to the Petition for Writ of Certiorari herein.

as truly the Board was in violation of the Act in all that it did in the case. If the Respondent is to be brought to book for disregarding the Statute, it must be done in a proceeding which does not disregard the Statute. Unlawful acts are not to be corrected by unlawful orders.

Respectfully submitted,

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